

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRACY CLARE MICKS-HARM,

Lead Case No. 18-12634

Hon. Denise Page Hood
Magistrate R. Steven Whalen

Plaintiff,

vs.

Motion to Dismiss

WILLIAM PAUL NICHOLS ET AL.,

Defendants.

Consolidated with Case Nos. 18-
13206, 18-13639, 18-13647, 19-10125,
19-10126, 19-10132, 19- 10135,
19-10299

Tracy Clare Micks-Harm
Plaintiff Pro Per
1840 Bayview Drive
Monroe, MI 48161
Tel: (734) 659-6383

Renay Blakesley
Plaintiff Pro Per
6298 Suder
Erie, MI 48133
Tel: (734) 347 3393

Debra A. Nichols
Plaintiff Pro Per
401 W. 4th St.
Monroe, MI 48161
Tel: (734) 819-0260

Robert S. Iwrey (P48688)
James R. Witham (P79270)
THE HEALTH LAW PARTNERS, PC
Attorneys for Defendant iPatient Care Inc.
32000 Northwestern Hwy, Suite 240
Farmington Hills, MI 48334
Tel: (248) 996-8510
Fax:(248) 996-8525

James T. Farrell (P35400)
Michigan Dept. of Attorney General
Attorney for Moore, Street, Todd,
Beard, Pedell, Young, Schuette,
Fitzgerald, Erickson, Waskiewicz, St.
John, MI Admin. Hearing System

Ines Helm
Plaintiff Pro Per
1666 N. Raisinville Rd.
Monroe, MI 48162
Tel: (734) 819-0260

Dennis Helm
Plaintiff Pro Per
1666 N. Raisinville Rd.
Monroe, MI 48162
Tel: (734) 639-1808

Eric Cook
Plaintiff Pro Per
for Jacob Cook
920 Greenwood Apt E.
Monroe, MI 48162
Tel: 734-636-3163

Raymond Blakesley
Plaintiff Pro Per
6298 Suder
Erie, MI 48133
Tel: 734-347-3393

Eric Cook
Plaintiff Pro Per
920 Greenwood, Apt. E.
Monroe, MI 48162

(State Defendants)
Complex Litigation Division
P.O. Box 30736
525 W. Ottawa St.
Lansing, MI 48909
517.335.3055
farrellj@michigan.gov

Stefanie R. Phillips (P76316)
BLUE CROSS BLUE SHIELD OF MI
Attorney for BCBS Defendants,
Bluecaid, Stewart, Christensen,
Robertson, Silas, Gallagher, Zazadny
600 E. Lafayette Blvd., Suite 1925
Detroit, MI 48226
313.225.8137
sPhillips@bcbsmi.com

Brandon C. Helms (IL 6294316)
Bradley Darling (P63176)
US DEPARTMENT OF JUSTICE
Atty for Schneider, Pratt and McMillion
(Federal Defendants)
211 W. Fort Street, Suite 2001
Detroit, MI 4826
313.226.9639
brandon.helms@usdoj.gov

S. Randall Field (P31841)
Victoria L. Convertino (P81453)
Daniel A. Klemptner (P68691)
ROSATI, SCHULTZ, JOPPICH &
AMTSBUECHLER
Attorneys for Wm. Nichols, Todd,
Chaffin, Vitale, White, McClain, Arnold,
Yorkey, Roehrig, Malone
(Monroe County Defendants)

822 Centennial Way, Ste 270
Lansing, MI 48917
517.886.3800
rfield@jrslaw.com
vconvertino@jrslaw.com
dklempner@rsjalaw.com

John J. Gillooly (P41948)
Anthony P. Monticciolo (P76013)
Thomas David Beindit (P81133)
GARAN LUCOW MILLER, P.C.
Attorney for Monroe Police Dept.,
Kotch, Cathey, Lindsay, Oetjens,
Merkle, Brady and Miller
1155 Brewery Park Blvd., Ste 200
Detroit, MI 48207
313.446.5501 / 313.259.0450 (fax)
jgillooly@garanlucow.com
amonticciolo@garanlucow.com
tbeindit@garanlucow.com
dklempner@rsjalaw.com

DEFENDANT IPATIENTCARE INC.'S MOTION TO DISMISS

NOW COMES Defendant, IPATIENTCARE INC. (“**IPC**”), by and through its legal counsel, Robert S. Iwrey Esq. and James R. Witham Esq., of THE HEALTH LAW PARTNERS, P.C., and states as follows:

1. This Motion is brought pursuant to Fed. R. Civ. P. 12(b)(6) or in the alternative, pursuant to Fed. R. Civ. P 12(d).
2. Plaintiffs, Tracy Clare Micks-Harm, Debra Nichols, Ines Helm, Dennis Helm, Renay Blakesley, Raymond Blakesley, Eric Cook, and Eric Cook (on behalf of

Jacob Cook) have filed lawsuits against IPC that have been removed from Monroe County Circuit Court into federal court.

3. On February 15, 2019, this Court determined that the above-mentioned Plaintiffs and their cases would be consolidated under Micks-Harm v. Nichols et al., case number 2:18-cv-12634-DPH-RSW.¹

4. IPC moves to dismiss all cases consolidated under Micks-Harm v. Nichols et al., case number 2:18-cv-12634-DPH-RSW.

5. Plaintiffs make various deficiently pled claims against IPC in which they allege violations of HIPAA, the Computer Fraud and Abuse Act, the Klu Klux Klan Act of 1870 and 1871, the Fourth Amendment and various undefined constitutional rights.

¹ Subsequently, on February 20, 2019, this Court entered an Order to consolidate the above-mentioned cases and any other new and related cases filed and reassigned to the Court (ECF No. 27) and specifically cited:

- 1) Nichols v. Nichols et al, 18-cv-13206 (Hood, J.) (removed on October 15, 2018);
- 2) Helm v. Arnold et al, 18-cv-13639 (Hood, J.) (removed on November 21, 2018);
- 3) Helm v. Nichols et al, 18-cv-13647 (Hood, J.) (removed on November 21, 2018);
- 4) Cook v. William et al, 19-cv-10125 (Hood, J.) (removed on January 14, 2019);
- 5) Cook v. Nichols et al, 19-cv-10126 (Hood, J.) (removed on January 14, 2019);
- 6) Cook v. Nicols et al, 19-cv-10132 (Hood, J.) (removed on January 14, 2019);
- 7) Cook v. Nichols et al, 19-cv-10135 (Hood, J.) (removed on January 14, 2019); and
- 8) Blakesley v. Nichols et al, 19-cv-10299 (Hood, J.) (removed on January 30, 2019)

for consolidation.

6. In summary, Plaintiffs appears to be alleging that IPC is responsible for the above-mentioned violations because of a search and seizure of their medical records through various governmental entities.

7. For the reasons stated in the accompanying Brief in support of this Motion, IPC hereby moves for dismissal of Plaintiffs' claims against it for the following reasons:

(a) HIPAA provides no private cause of action;

(b) HIPAA expressly authorizes the use of protected health information for law enforcement activities and fraud waste and abuse investigations;

(c) Plaintiff has not sufficiently pled and does not have a viable claim under the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030;

(d) the Fourth Amendment and any other constitutional-related claims fail as pled against IPC since such claims can only be brought against a state actor;

(e) any conspiracy claims fail together with their underlying claims;

(f) the Complaint is deficient of facts and causation pertaining to IPC, thereby failing to reasonably inform IPC of the nature of Plaintiff's claims and falls short of applicable pleading requirements.

WHEREFORE, IPC respectfully requests that this Honorable Court grant its Motion to Dismiss and dismiss Plaintiffs' claims against it with prejudice and tax attorney's fees and costs as applicable.

Dated: February 22, 2019

THE HEALTH LAW PARTNERS, P.C.

By: /s/ James R. Witham

Robert S. Iwrey (P48688)

James R. Witham (P79270)

Attorneys for Defendant iPatientCare Inc.

32000 Northwestern Highway, Suite 240

Farmington Hills, MI 48334

Tel: (248) 996-8510

Fax: (248) 996-8525

riwrey@thehelp.com

jwitham@thehelp.com

THE HEALTH LAW PARTNERS, P.C. - 32000 NORTHWESTERN HWY., STE. 240 - FARMINGTON HILLS, MI 48334 - (248) 996-8510

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**Brief in Support of
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Monroe, MI 48162

(State Defendants)
Complex Litigation Division
P.O. Box 30736
525 W. Ottawa St.
Lansing, MI 48909
517.335.3055
farrellj@michigan.gov

Stefanie R. Phillips (P76316)
BLUE CROSS BLUE SHIELD OF MI
Attorney for BCBS Defendants,
Bluecaid, Stewart, Christensen,
Robertson, Silas, Gallagher, Zazadny
600 E. Lafayette Blvd., Suite 1925
Detroit, MI 48226
313.225.8137
sPhillips@bcbsmi.com

Brandon C. Helms (IL 6294316)
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US DEPARTMENT OF JUSTICE
Atty for Schneider, Pratt and McMillion
(Federal Defendants)
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brandon.helms@usdoj.gov

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Daniel A. Klemptner (P68691)
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Chaffin, Vitale, White, McClain, Arnold,
Yorkey, Roehrig, Malone
(Monroe County Defendants)

822 Centennial Way, Ste 270
Lansing, MI 48917
517.886.3800
rfield@jrsjlaw.com
vconvertino@jrsjlaw.com
dkleemptner@rsjalaw.com

John J. Gillooly (P41948)
Anthony P. Monticciolo (P76013)
Thomas David Beindit (P81133)
GARAN LUCOW MILLER, P.C.
Attorney for Monroe Police Dept.,
Kotch, Cathey, Lindsay, Oetjens,
Merkle, Brady and Miller
1155 Brewery Park Blvd., Ste 200
Detroit, MI 48207
313.446.5501 / 313.259.0450 (fax)
jgillooly@garanlucow.com
amonticciolo@garanlucow.com
tbeindit@garanlucow.com
dkleemptner@rsjalaw.com

**BRIEF IN SUPPORT OF DEFENDANT IPATIENTCARE INC.'S MOTION
TO DISMISS**

CONCISE STATEMENT OF ISSUES PRESENTED

- I. Whether Plaintiffs' complaints should be dismissed because they fail to plead a claim under applicable pleading standards.
- II. Whether Plaintiffs have a private cause of action under HIPPA.
- III. Whether Plaintiffs' CFAA Claims are adequately pled with a viable cause of action.
- IV. Whether Plaintiffs' constitutional-related claims against iPatientCare Inc. ("**IPC**") are viable causes of action.
- V. Whether Plaintiffs' Conspiracy-Related Claims Fail without the support of viable underlying claims.
- VI. Whether amendment of Plaintiffs' claims will be futile.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

I. Whether Plaintiffs' complaints should be dismissed because they fail to plead a claim under applicable pleading standards. Fed.R.Civ.P. 12(b)(6); *Ashcroft v. Iqbal*, 556 U.S. 662; 129 S.Ct. 1937; 173 L.Ed.2d 868 (2009), *Bell Atlantic Corp v. Twombly*, 550 U.S. 544; 127 S.Ct. 1955; 167 L.Ed.2d 929 (2007); Fed. R. Civ. P. 8(a); MCR 2.111.

II. Whether Plaintiffs have a private cause of action under HIPPA. Fed. R. Civ. P. 12(b)(6) *Thomas v. Univ. of Tenn. Health Sci. Ctr. at Memphis*, No. 17-5708, 2017 WL 9672523, at *2 (6th Cir. Dec. 6, 2017); 45 C.F.R. § 164.512(f).

III. Whether Plaintiffs' CFAA Claims are adequately pled with a viable cause of action. Fed. R. Civ. P. 8(a); 18 U.S.C. § 1030(g).

IV. Whether Plaintiffs' constitutional-related claims against IPC are viable causes of action. *Gottfried v Med Planning Servs*, 280 F3d 684 (6th Cir, 2002).

V. Whether Plaintiffs' Conspiracy-Related Claims Fail without the support of viable underlying claims. *Urbain v. Beierling*, 301 Mich. App. 114, 132, 835 N.W.2d 455, 464 (2013).

VI. Whether amendment of Plaintiffs' claims will be futile. FRCP 15(a)(2); *Beydoun v. Sessions*, 871 F.3d 459, 469 (6th Cir. 2017).

ADOPTION OF PREVIOUSLY FILED MOTIONS TO DISMISS

Before this Court's consolidation of cases into the Micks-Harm case, IPC filed three separate Motions to Dismiss in cases similar to this one:

ECF 14, 2:18-cv-13647 (I. Helm) (Exhibit A);

ECF 14, 2:18-cv-13639 (D. Helm) (Exhibit B); and

ECF 36, 2:18-cv-13206 (D. Nichols) (Exhibit C).

In order to reduce duplicative pleading and arguments, IPC adopts and incorporates these motions and their briefings to this case. Furthermore, IPC requests the Court to consider the facts, arguments, evidence, and relief requested in these motions for dismissal of all claims against it by all current Plaintiffs in this case and by any future Plaintiffs who file similar claims in this case. A true and accurate copy of the above-mentioned motions is attached as Exhibits A-C, respectively.

ADOPTION OF MOTIONS TO DISMISS FILED BY OTHER DEFENDANTS

To the extent applicable and not inconsistent with any argument set forth above, IPC adopts and incorporates by reference all arguments raised by motions to dismiss filed by other Defendants in this case and any of the cases that were consolidated in this case.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, IPC respectfully requests that this Court grant IPC's Motion to Dismiss, dismiss (current and future related) Plaintiffs' claims against IPC with prejudice, and award costs and fees incurred by IPC as a result of this frivolous action.

Dated: February 22, 2019

Respectfully submitted,

THE HEALTH LAW PARTNERS, P.C.

By: /s/ James R. Witham

Robert S. Iwrey (P48688)

James R. Witham (P79270)

Attorneys for Defendant iPatientCare Inc.

32000 Northwestern Highway, Suite 240

Farmington Hills, MI 48334

Tel: (248) 996-8510

Fax: (248) 996-8525

riwrey@thehelp.com

jwitham@thehelp.com

THE HEALTH LAW PARTNERS, P.C. - 32000 NORTHWESTERN HWY., STE. 240 - FARMINGTON HILLS, MI 48334 - (248) 996-8510

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February 2019, Defendant iPatientCare Inc.'s Motion (and Brief in Support of Motion) to Dismiss was filed with the Clerk of the Court through the ECF system which will give notice to all parties of record. In addition, I further certify that the following entities/individuals were served via U.S. mail, certified return receipt, postage prepaid:

Tracy Clare Micks-Harm
Plaintiff Pro Per
1840 Bayview Dr.
Monroe, MI 48161

Renay Blakesley
Plaintiff Pro Per
6298 Suder Ave.
Erie, MI 48133

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Plaintiff Pro Per
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Plaintiff Pro Per
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Eric Cook
Plaintiff Pro Per
920 Greenwood, Apt. E.
Monroe, MI 48162

Eric Cook
for Jacob Cook
920 Greenwood Apt E.
Monroe, MI 48162

The following entities/individuals were served via U.S. First Class mail postage prepaid:

Stefanie R. Phillips
BLUE CROSS BLUE SHIELD OF MI
Attorney for BCBS Defendants,
Bluecaid, Stewart, Christensen,
Robertson, Silas, Gallagher, Zazadny
600 E. Lafayette Blvd., Suite 1925
Detroit, MI 48226

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St. John, MI Admin. Hearing System
(State Defendants)
Complex Litigation Division
P.O. Box 30736
525 W. Ottawa St.
Lansing, MI 48909

/s/Sarah Hug
Sarah Hug
Office Manager
The Health Law Partners, P.C.
32000 Northwestern Highway, Suite 240
Farmington Hills, MI 48334
(248) 996-8510

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THE HEALTH LAW PARTNERS, P.C. - 32000 NORTHWESTERN HWY., STE. 240 - FARMINGTON HILLS, MI 48334 - (248) 996-8510